



Province of
British Columbia

Ministry of
Environment,
Lands and Parks

Lease Aquatic Lands

Lease No.

235369

File No. 0240393

THIS LEASE dated for reference the 15th day of July, 1993.

IN PURSUANCE of the *LAND ACT* (Section 35) and the *LAND TRANSFER FORM ACT*

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA, represented
by the Minister of Environment, Lands and Parks,
Parliament Buildings, Victoria, British Columbia

(hereinafter called the "Lessor")

OF THE FIRST PART

AND:

Kokanee Equities Ltd., (Inc. No. 229429)
P.O.Box 90
Garden Bay, British Columbia
V0N 1S0

(hereinafter called the "Lessee")

OF THE SECOND PART

WITNESS THAT WHEREAS the Lessor has agreed to grant to the Lessee a lease over that parcel of land described in the schedule attached entitled Legal Description (hereinafter called the "Land");

NOW THEREFORE in consideration of the fee to be paid by, and the covenants of the Lessee, the parties agree as follows:

Article I - Grant of Lease

(1.01) The Lessor, on the terms set forth herein, hereby demises and leases to the Lessee the Land for *marina purposes*.

Article II - Term

(2.01) TO HAVE AND TO HOLD the Land unto the Lessee for a *term of 30 years commencing on the 21st day of July, 1993* (hereinafter called the Commencement Date").

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Article III - Fees

(3.01) YIELDING AND PAYING THEREFORE for the term the fees prescribed in the Fee Schedule attached.

Article IV - Covenants of the Lessee

(4.01) The Lessee covenants with the Lessor

- (a) to pay fees when due at the address of the Lessor first above written or at such other place as the Lessor may specify by notice in writing;
- (b) to pay and discharge when due all applicable taxes, levies, charges and assessments now or hereafter assessed, levied or charged which relate to the Land or any improvements thereon (herein called "Realty Taxes");
- (c) to observe, abide by and comply with all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and improvements situate thereon, or their use and occupation;
- (d) to keep the Land in a safe, clean and sanitary condition satisfactory to the Lessor, and on written notice from the Lessor to make safe, clean and sanitary any portion of the Land or any improvements that, in the opinion of the Lessor, contravenes the provisions of this covenant;
- (e) not to commit or suffer any willful or voluntary waste, spoil or destruction on the Land or to do or suffer to be done thereon anything that may be or become a nuisance or annoyance to the owners or occupiers of adjoining land;
- (f) to use and occupy the Land in accordance with the provisions of this lease and any Special Proviso Schedule;
- (g) to effect and keep in force during the term, insurance protecting the Lessor and the Lessee (without any rights of cross-claim or subrogation against the Lessor) against claims for personal injury, death, property damage, third party or public liability claims arising from any accident or occurrence on the Land or improvements up to an amount not less than \$1,000,000.00, PROVIDED, however that the Lessor may, in his sole discretion, waive the requirements of this subsection on the delivery to the Lessor of evidence that the Lessee is self insured;
- (h) to deliver to the Lessor from time to time, upon demand, proof of insurance required to be maintained by the Lessee, receipts or other evidence of payment of Realty Taxes, insurance premiums, leasehold mortgage installments or other monetary obligations of the Lessee required to be observed by the Lessee pursuant to this lease;
- (i) notwithstanding subsection (g) of section 4.01, the Lessor may from time to time notify the Lessee that the amount of insurance posted by the Lessee pursuant to that subsection be changed and the Lessee shall, within 60 days of receiving such notice, cause the amount of insurance posted pursuant to subsection (g) of section 4.01 to be changed to the amount specified in the notice and deliver to the Lessor written confirmation of the change, except that when the Lessee is self-insuring this section shall not apply;
- (j) to indemnify and save the Lessor harmless against all loss, damages, costs and liabilities, including fees of solicitors and other professional advisors arising out of
 - (i) any breach, violation or non-performance of any covenant, condition or agreement in this lease by the Lessee,

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- (ii) any personal injury, death or property damage occurring on the Land or happening by virtue of the Lessee's use or occupation of the Land, and the Lessor may add the amount of such loss, damages, costs and liabilities to the fees and the amount so added shall be payable to the Lessor immediately;
- (k) to pay all accounts and expenses for labour performed on, or material supplied to, the Land, in accordance with the *Builders Lien Act*, and on behalf of the Lessor, to place written notices immediately after the commencement of any construction on the Land, on at least two conspicuous places, giving notice that the Lessor shall not be responsible for the cost of labour, services or materials performed on or supplied to the Land;
- (l) on the expiration or earlier cancellation of this lease
 - (i) to peaceably quit and deliver possession of the Land and any improvements thereon to the Lessor, in a safe and sanitary condition,
 - (ii) to restore the surface of the Land to the satisfaction of the Lessor, AND
 - (iii) notwithstanding section 4.01 (l)(i) to remove any improvements that the Lessor may, in writing, direct or permit to be removed, and all right, interest and estate of the Lessee shall cease and vest in the Lessor, and to the extent necessary this covenant shall survive the expiration or earlier cancellation of this lease;
- (m) to permit the Lessor, or his authorized representative, to enter upon the Land at anytime to inspect the Land and any improvements thereon;
- (n) not to deposit on the Land or any part of it, any earth, fill or other material for the purpose of filling in or raising the level of the Land without the prior written consent of the Lessor;
- (o) not to dredge or significantly displace beach material on the Land without the prior written consent of the Lessor;
- (p) not to place any improvements on the Land or carry on any activity on the Land or on the surface of the water covering the Land that may constitute an interference with the riparian rights of the owner or occupier of the land adjacent to the Land.

Article V - Assignment

- (5.01) The Lessee shall not assign, mortgage, sublet or transfer this lease without the prior consent of the Lessor.

Article VI - Covenants of the Lessor

- (6.01) The Lessor covenants with the Lessee for quiet enjoyment.

Article VII - Provisos

- (7.01) PROVIDED always and it is hereby agreed as follows:

- (a) if, after the termination by the passage of time of this lease or any extension thereof, the Lessor permits the Lessee to remain in possession of the Land and accepts rent in respect thereof, a tenancy from year to year shall not be created by implication of law and the Lessee shall be deemed to be a monthly tenant only subject to all of the terms and conditions of this lease, except as to duration in the absence of a written agreement to the contrary;

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- (b) title to and ownership of all buildings, structures and other improvements now or hereafter constructed on the Land shall be vested in the Lessor and the Lessee shall neither remove nor permit the removal of them from the Land except as expressly permitted or required by this lease;
- (c) the Lessor is under no obligation to provide access or services to the Land or to maintain or improve existing access roads;
- (d) the Lessor hereby reserves the right to grant other dispositions of the Land, or any part of it, with the prior consent of the Lessee, which consent shall not be unreasonably withheld, by way of easement, right of way or statutory right of way to a Crown corporation or agency, a municipality, or regional district, or a person or corporation and, upon such consent being given, the Lessee shall forthwith execute and deliver to the Lessor such instrument as may be necessary to subordinate the Lessee's right and interest in the Land under this lease;
- (e) for the purpose of subsection (d) of section 7.01, the Lessee shall be deemed to have withheld his consent reasonably if a grant of rights under that subsection would materially affect the exercise of the Lessee's rights hereunder;
- (f) if a dispute should arise as to whether or not the exercise of the Lessee's rights hereunder would, in fact, be materially affected by a grant of rights under subsection (d) of section 7.01, then, the dispute shall be referred to a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*;
- (g) the Lessee hereby acknowledges and agrees that no claim for compensation shall be made, in any form, in respect of a grant of rights under subsection (d) of section 7.01, where such rights do not materially affect the exercise of the Lessee's rights hereunder;
- (h) this lease and the term herein granted is subject to:
 - (i) all subsisting grants to or rights of any person made or acquired under the *Coal Act, Forest Act, Mineral Tenure Act, Petroleum and Natural Gas Act, Range Act, Wildlife Act*, or *Water Act*, or any extension or renewal of the same, whether or not the Lessee has actual notice of them, AND
 - (ii) the exceptions and reservations of rights, interests, privileges and titles referred to in section 47 of the *Land Act*;
- (i) the Lessee acknowledges and agrees with the Lessor that
 - (i) any interference with the rights of the Lessee under this lease by virtue of the exercise or operation of the rights, privileges or interests described in subsections (d) and (h) of section 7.01 shall not constitute a breach of the Lessor's covenant of quiet enjoyment and the Lessee releases and discharges the Lessor from and against any claims for loss or damage arising directly or indirectly out of any such interference,
 - (ii) all costs and expenses, direct or indirect, that arise out of any interference by the Lessee with the rights, privileges and interests described in subsections (d) and (h) of section 7.01 shall be borne solely by the Lessee,
 - (iii) he shall not commence or maintain proceedings under section 60 of the *Land Act* in respect of any interference with his rights hereunder arising directly or indirectly out of the exercise or operation of the right, privileges or interests described in subsections (d) and (h) of section 7.01, AND
 - (iv) all schedules attached to this lease form an integral part of this lease.

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Article VIII - Events of Default

(8.01) PROVIDED ALSO that this lease and the term and estate hereby granted are subject to the limitation that

- (a) if the Lessee shall default in the payment of any installment of fees, or the payment of any other sum payable hereunder, and such default shall continue for 60 days after the giving of written notice by the Lessor to the Lessee;
- (b) if the Lessee shall fail to perform or observe any of the covenants, agreements, conditions or provisos contained in this lease on the part of the Lessee to be performed or observed (other than the payment of fees or other sums of money) and such failure shall continue for, or shall not be remedied within, the period of 60 days next after the giving of written notice by the Lessor to the Lessee of the nature of such failure;
- (c) if the term hereby granted shall be taken in execution or attachment by any person or the Lessee commits an act of bankruptcy, becomes insolvent or is petitioned into bankruptcy or voluntarily enters into an arrangement with his creditors;
- (d) if the Lessor discovers that the Lessee either in his application for this lease or otherwise has, in the opinion of the Lessor, misrepresented or withheld any fact material to the application; OR
- (e) if, in the opinion of the Lessor, the Lessee fails to make reasonable and diligent use of the Land for the purposes permitted herein, and such failure shall continue for a period of 60 days next after the Lessor gives written notice of the failure to the Lessee;

it shall then be lawful for the Lessor to enter upon the Land or any part thereof in the name of the whole, and this lease shall at the option of the Lessor, and with or without entry, terminate, and all the rights of the Lessee with respect to the Land shall be absolutely forfeited and shall lapse. If the condition complained of (other than the payment of fees or other sums of money) reasonably requires more time to cure than 60 days, the Lessee shall be deemed to have complied with the remedying thereof if the Lessee shall have commenced remedying or curing the condition within the 60 day period and diligently thereafter completes the same.

Article IX - Security

- (9.01) The security in the sum of \$2,500.00 and all rights, privileges, benefits and interests accruing thereto delivered by the Lessee to the Lessor (herein called the "Security") to guarantee the performance of the Lessee's obligations under this lease shall be maintained in effect until such time as the Lessor certifies in writing that such obligations have been fully performed, Provided, however, that the Lessor may, in his sole discretion, waive the requirements of this subsection.
- (9.02) In the event the Lessee should default in the performance of any of his obligations hereunder, it shall be lawful for the Lessor, in his sole discretion, to sell, call in and convert the Security, or any part of it, and such Security shall be deemed to have been absolutely forfeited to the Lessor.
- (9.03) The rights of the Lessor under this Article shall be deemed to continue in full force and effect notwithstanding the expiration or earlier cancellation of this lease.
- (9.04) Notwithstanding section 9.01, the Lessor may from time to time notify the Lessee that the amount of Security delivered by the Lessee to the Lessor be changed and specify the amount of Security required by the Lessor.

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- (9.05) The Lessee shall, within 60 days of receiving the notice referred to in section 9.04, cause the amount of security delivered to the Lessor to be changed to the amount specified in the notice and provide the Lessor with written confirmation of the change.

Article X - Notice

- (10.01) Where service of a notice or a document is required under this lease the notice or document shall be in writing and shall be deemed to have been delivered to, or if sent by prepaid registered mail addressed to, the Lessor and the Lessee at the addresses specified for each in this lease, and where service is by registered mail the notice or document shall be conclusively deemed to have been served on the eighth day after its deposit in a Canada Post office at any place in Canada.
- (10.02) Either party may, by notice in writing to the other, specify another address for service of notices under this lease, and where another address is specified under this section, notices shall be mailed to that address in accordance with this Article.
- (10.03) Notwithstanding section 10.01, any written notice to be served or given by the Lessor to the Lessee under this lease shall be effectively given or served by posting the same in a conspicuous place on the Land.

Article XI - Miscellaneous

- (11.01) No term, condition, covenant or other provision herein shall be considered to have been waived by the Lessor unless such waiver is expressed in writing by the Lessor. Any such waiver of any term, condition, covenant or other provision herein shall not be construed as or constitute a waiver of any further or other breach of the same or any other term, condition, covenant, or other provision and the consent or approval of the Lessor to any act by the Lessee requiring the consent or approval of the Lessor shall not be considered to waive or render unnecessary such consents or approvals to any subsequent same or similar act by the Lessee.
- (11.02) No remedy conferred upon or reserved to the Lessor is exclusive of any other remedy herein or provided by law, but such remedy shall be cumulative and shall be in addition to any other remedy herein or hereafter existing at law, in equity, or by statute.
- (11.03) The terms and provisions of this lease shall extend to, be binding upon and enure to the benefit of the parties hereto and their successors and permitted assigns.
- (11.04) Time is of the essence in this agreement.

Article XII - Interpretation

- (12.01) In this lease, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
- (12.02) The captions and headings contained in this lease are for convenience only and are not to be construed as defining or in any way limiting the scope or the intent of the provisions hereof.
- (12.03) Where this lease contains the forms of words contained in Column I of Schedule 4 of the *Land Transfer Form Act*, those words shall have the same effect and be construed as if the appropriate forms of words contained in Column II of that Schedule were contained herein in their place, unless the context requires another construction of those words.

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- (12.04) Where in this lease there is a reference to an enactment of the Province of British Columbia or of Canada, that reference shall include a reference to any subsequent enactment of like effect, and unless the context otherwise requires, all statutes referred to herein are enactments of the Province of British Columbia.
- (12.05) If any section of this lease or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, shall be considered separate and severable and the remaining parts or sections, as the case may be, shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this lease as of the day and year first above written.

SIGNED on behalf of Her Majesty the Queen in Right of the Province of British Columbia by the Minister of Environment, Lands and Parks or his duly authorized signatory in the presence of:

V.A. Sawther

Charles Fyfe
Minister

Authorized Signatory

SIGNED on behalf of Kokanee Equities Ltd. by a duly authorized signatory in the presence of:

Hugh W. Jones

HUGH W. JONES

Barrister & Solicitor

231 - 5710 TEREDO STR. P.O. BOX 1669
SECHLT, B.C. V0N 3A0

KOKANEE EQUITIES LTD.

Per. John

Authorized Signatory

Maître John



Province of
British Columbia

Ministry of
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Lands and Parks

SPECIAL PROVISO SCHEDULE

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1. The Lessee shall:

- (a) not anchor or secure any buildings, structures or improvements on the Land except as shown in the Legal Description Schedule;
- (b) not interrupt the movement of beach sedimentary material by water along the shoreline;
- (c) not construct a fence, bulkhead, groin, breakwater, floating boom or any structure by another name which acts in a like manner, on the Land, without the prior written consent of the Lessor;
- (d) dispose of raw sewage and refuse only in accordance with the requirements and regulations of appropriate federal and provincial agencies;
- (e) store bulk hazardous petroleum products and other toxic substances in accordance with the provisions of the *Waste Management Act*;
- (f) not use construction materials containing toxic substances, except in marine waters where the use of preservative-treated wood may be necessary;
- (g) in each and every year during the term of this Lease **within 60 days** of an anniversary of the Commencement Date deliver to the Lessor a Statutory Declaration containing:
 - (i) the amount of lineal footage of moorage space developed on the Land,
 - (ii) the monthly moorage charge per lineal foot for open moorage space,
 - (iii) the number of months, or portion thereof, the operation is open for business,
 - (iv) the ancillary uses in the operation,
 - (v) the amount of business generated during the months of closure.

2. ADDITIONAL PROVISOS

- (a) The Lessee covenants and agrees to obtain the written approval from the Lessor prior to the construction of any additional improvements.



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FEE SCHEDULE

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FEE

1. The fee shall be:

- (a) for the first year of the term a fee of \$911.00 payable in advance, on the Commencement Date; AND
- (b) during the balance of the term the sum of each of the annual fees determined under Sections 3 and 5 of this Schedule or \$500, whichever is the greater, payable in advance beginning on the first anniversary of the Commencement Date and thereafter on each anniversary of that date.

MOORAGE AND ANCILLARY USE

2. In this schedule

"Potential Gross Income From Moorage" = (amount of lineal footage of moorage space on the Land) x (monthly moorage charge per lineal foot for open moorage space) x (number of months, or portion thereof, operation is open for business).

"Rate":

- (a) during the first 15 year period of the term shall mean 3.5%; and
 - (b) during the second 15 year period of the term shall mean 4.0%.
3. The annual fee payable under this section shall be an amount equivalent to the product of the Potential Gross Income From Moorage multiplied by the Rate, LESS the Moorage Fee Discounts, if any.

NON-MOORAGE USES

4. In this Schedule

"Land Value" means for the first five years of the term the value for the Land established by the Lessor prior to the Commencement Date and thereafter shall be subject to review by the Lessor prior to the sixth anniversary of the Commencement Date and thereafter at five year intervals during the remainder of the term.

"Ratio" during each year of the term means the percentage fixed by the Lessor at his sole discretion.

5. The annual fee payable under this section shall be an amount equivalent to the product of the Land Value multiplied by the Ratio, LESS the Non-moorage Rental Discounts, if any.

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OTHER

6. In the event the Statutory Declaration is delivered by the Lessee to the Lessor before the 60 day period referred to in the Special Proviso Schedule, the Lessor shall, not later than 15 days before the anniversary of the Commencement Date during each year of the term, give written notice to the Lessee specifying the annual fee payable under section (a) for the immediately succeeding year of the term.
7. If the Lessor does not give notice under section 6 the annual fee shall be equal to the annual fee calculated or in force during the immediately preceding year of the term.
8. If the Lessee fails to deliver the required Statutory Declaration to the Lessor before the 60 day period referred to in the Special Proviso Schedule, the Lessor may:
 - (a) enter upon the Land and do such things as are necessary to determine that information required by subsection 1 (g) of the Special Proviso Schedule; and
 - (b) based on the information determined under subsection 8(a) above, set the annual fee, retroactive to the last anniversary date of the Commencement Date.
9. The annual fee specified in a notice shall constitute conclusive evidence of the annual fee payable for the year of the term specified therein.